



MEMORANDUM

TO: Zoning Commission

FROM: Woodrow Muhammad AICP, Planning & Zoning Director

SUBJECT: **RZ-06-13, REZONING FROM RURAL to B1 (NEIGHBORHOOD BUSINESS DISTRICT ONE)
(Findings of Fact) Deferred from the January 23, 2014 Meeting**

LOCATION This property is located 13151 Denham Road which is on the north side of Denham Road between the Joor and Devall Road intersections on Tract C of the former Presley G. Clayton property in Section 30, T5S, R2E, EBR, LA. The proposed rezoning would be the first 600 feet of the property from the front property line adjacent to Denham Road. The applicant is proposing a commercial use to complete long term plans of an existing and/or future business.

EXISTING LAND USE Undeveloped

PROPOSED LAND USE 1600 sq. ft. Office

MASTER PLAN Low Density Residential

PRESENT ZONING Rural

PROPOSED ZONING B1 (Neighborhood Business District One)

APPLICANT James L. Weeks

STAFF COMMENTS

1. **Existing land use** is Undeveloped.
2. **Surrounding land uses** include Residential, Commercial, and Institutional (Church).
3. **Existing zoning** is Rural.
4. **Surrounding zoning** is Rural and C2 (Heavy Commercial).
5. **Size of Subject Property** is approximately 2 acres. However, the portion of the property under consideration for rezoning to B1 is the first 600 feet of the property from the front property line adjacent to Denham Road (**See Attached Site Plan**).



6. Bulk Regulations (Zoning Ordinance Section 6.3)

Minimum Front Yard Setback, 25'	Met
Minimum Rear and Side Yard Setback, 10' (30' if adjacent to residential district)	Not met, side yard on eastern side of property is 25'
Lot Area, Minimum 10,000 square feet, Maximum of 2 acres	Met
Building Area, maximum 5,000 square feet	Met
Permitted Uses	(See Attachment A)

7. **Master Plan Statement.** The City of Central Master Use Plan specifies Low Density Residential at the subject property. **(See Attachment B)** This classification designates areas of low density development, intended for site-built single family residential construction with a maximum density of 2 units per acre. Minimum allowable densities in these areas should be restricted to one unit per five acres. Staff notes that the proposed rezoning is not consistent with the Master Plan.

8. **Staff Recommendation.** The **Development Code** in **Chapter 19.7 (A) (3) (d) Rezoning Guidelines and Criteria** states when considering a proposed zoning change, we should keep with zoning law and precedent, *by not creating a spot zone, that is, an incompatible or unrelated classification which would prevent the normal maintenance and enjoyment of adjacent properties.* The Staff would further advise that the rezoning to B-1 could allow any of the permitted uses in **Attachment A**. Therefore the Staff recommends to deny this request because it expands a spot zone and due to the fact that it is not consistent with the Master Plan. Please see the following attachments supporting the denial.

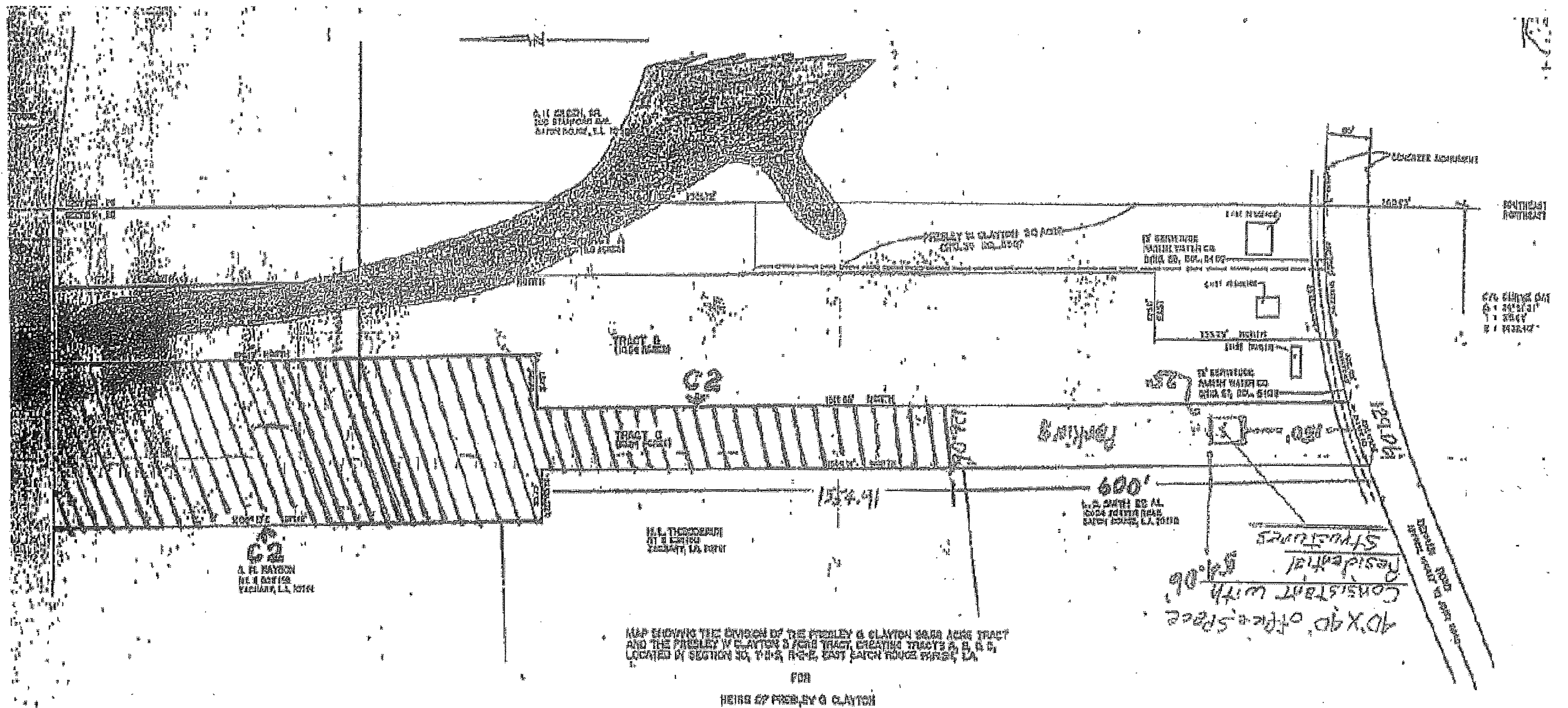
9. **Schedule**

Scheduled for Zoning Commission on February 27, 2014.

Scheduled for Mayor & City Council on March 25, 2014.



R2-6-13



APPROVED BY: Robert S. Malone
COUNTY & POLICE DEPARTMENT
CITY OF BIRMINGHAM, ALABAMA
EAST BAYVIEW, ALABAMA, L.A.

DATE: 7-12-81 P-20695

GENERAL NOTES:
1. THIS MAP IS A REPRODUCTION OF THE ORIGINAL SURVEY MAP.
2. THE ORIGINAL SURVEY MAP IS ON FILE IN THE OFFICE OF THE COUNTY CLERK, BIRMINGHAM, ALABAMA.

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Chapter 6: Neighborhood Business District (B-1)

Section 6.1 Purpose; permitted uses

The purpose of the Neighborhood Business District (B-1) is to provide sites for small scale service and retail establishments to support adjacent residential neighborhoods. This district includes personal service and retail or office buildings, that are 5,000 square feet or less and that conduct all business operations within an enclosed facility.

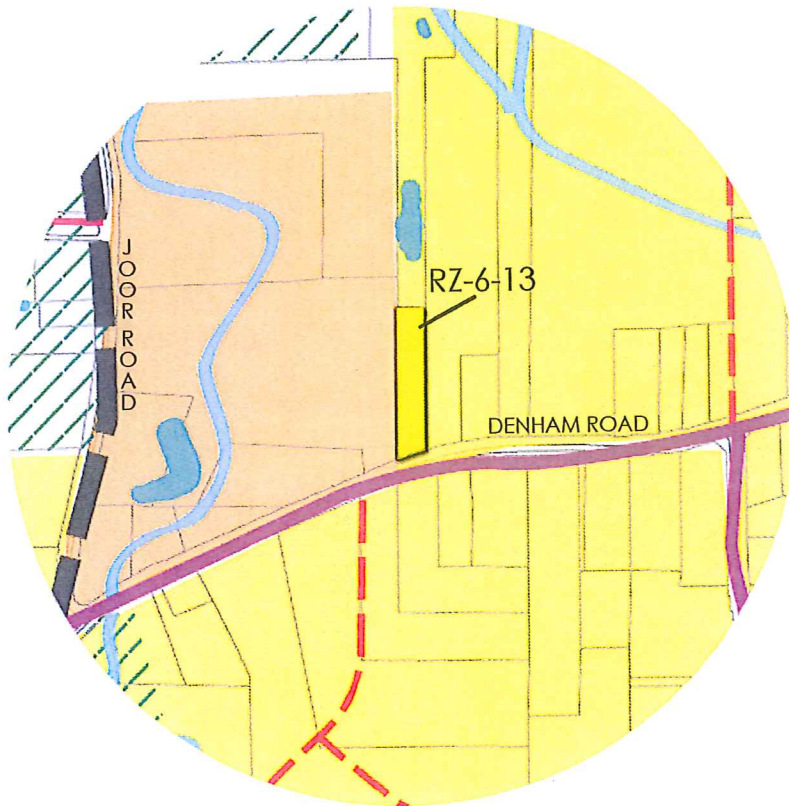
A. Office / Service Uses

1. Appliance repair
2. Banks and financial institutions (without drive-through)
3. Barber shops or beauty parlors
4. Computer/audio/television repair services
5. Dry cleaners (drop-off only, no plant on premises)
6. Health and Fitness Clubs
7. Laundromat
8. Lawnmower sales and service
9. Personal service establishments, including tanning salons, masseurs, and weight control clinics
10. Professional offices, including medical and dental clinics
11. Post office, parcel shipping, copy center
12. Tailor, seamstress/dress maker

B. Wholesale / Retail

1. Arts supply stores
2. Bakeries (where not more than 50% of the floor area is devoted to processing)
3. Bait shops
4. Bicycle stores, sales rental and repair
5. Butcher shops
6. Candy and ice cream/snowball stores
7. Convenience stores (without gasoline or alcoholic beverage sales)
8. Drug stores and pharmacies (without drive-through)
9. Florists shops
10. Garden supply and seed stores (not including greenhouses)
11. Gift shops
12. Grocery stores
13. Hardware stores
14. Hobby shops
15. Housewares and kitchen stores
16. Medical and orthopedic appliance stores
17. Newsstands
18. Optical sales and service establishments
19. Restaurants (without alcoholic beverage sales or drive-through)
20. Tailors and dress makers
21. Video sales and rental stores

MASTER PLAN - PHASE TWO LAND USE PLAN



- Utility
- Schools
- Conservation Areas
- Restricted Greenspace
- Incentive Greenspace
- Rural/Agriculture
- High Density Residential
- Medium Density Residential
- Low Density Residential
- Neighborhood Commercial
- General Commercial
- Office/Technology Park
- City Center
- Parks/Recreation

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Mark A. Balkin
Direct Dial 985.629.0750
mbalkin@hardycarey.com

2687.001

To: Members of the Planning & Zoning Commissions
From: Mark A. Balkin
Re: Rezoning of Properties
Date: February 3, 2014

Due to concerns regarding the P&Z's discussions on the recent application for a rezoning of property long zoned "Rural" to the B-1 Neighborhood Business District, we've been asked to provide you with information and direction regarding your obligations and responsibilities when considering an application to rezone a parcel of property.

First, we want to make sure you are aware of the legal effect of rezoning a property. Though a property owner may "promise" to limit the use of their property to a specific use, once rezoned, the property can be used in any way permitted in the new zoning district (provided other zoning standards such as parking, setbacks, height, etc. are met). While the City can condition a rezoning on a specific site plan, it is unlikely the courts would uphold conditions prohibiting permitted uses within the zoning district. See *WRW Properties, LLC v. City of Shreveport*, 47,657 (La. App. 2 Cir. 1/16/13), 2013 WL 163540; *Flex Enterprises, Inc. v. City of New Orleans*, 2000-0815 (La. App. 4 Cir. 2/14/01), 780 So.2d 1145, 1149

Section 33:4723 of the Louisiana Revised Statutes sets forth the purposes of municipal zoning codes:

The regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the public streets, secure safety from fire, promote health and the general welfare, provide adequate light and air, avoid undue concentration of population, and facilitate adequate transportation, water supply, sewerage, schools, parks, and other public requirements. The regulations shall be made with reasonable consideration of the character of the district and its peculiar suitability for particular uses, and with a view to conserving the values of buildings and encouraging the most appropriate use of land throughout the municipality.

Consistent with this statutory provision, Section 1.2 of the City's new Comprehensive Zoning Code proclaims its "Purpose." "The City of Central's Comprehensive Zoning Code is adopted for the purposes of protecting and promoting the public health, safety, and general welfare." This section also provides that "these purposes shall be accomplished by seeking:"

* * *

B. To zone all properties with a view to conserving the value of buildings and land and encouraging the most appropriate use of land throughout the City;

* * *

G. To foster a rational pattern of relationship between residential, business, commercial, and industrial uses for the mutual benefit of all;

* * *

I. To protect residential, business, commercial, and industrial areas alike from harmful encroachment by incompatible uses and to ensure that land allocated to a class of uses shall not be usurped by other inappropriate uses;

* * *

O. To implement the objectives of Central's Master Land Use Plan, as well as protect all appropriate existing structures and uses.

The Louisiana Supreme Court has also weighed in with the "purposes" of zoning:

Zoning is a general plan designed to foster improvement by confining certain classes of building and uses of property to certain localities, and its purpose is to reduce or eliminate the adverse effects that one type of land use might have on another.

Jenkins v. St. Tammany Parish Police Jury, 736 So.2d 1287, 1998-2627 (La. 7/2/99).

A city's zoning decision is presumed valid and is reviewed by the courts only to determine whether the decision "was an arbitrary and capricious exercise of governmental authority." *Lakeshore Harbor Condominium Development v. City of New Orleans*, 603 So.2d 192, 193 (La. App. 4 Cir. 1992) citing *Palermo Land Co., Inc. v. Planning Comm'n of Calcasieu Parish*, 561 So.2d 482 (La. 1990).

We believe that the best way to prevent any zoning decision from being deemed arbitrary and capricious is to consider two factors over all other information, promises and argument that an applicant presents: 1) the uses and zoning of nearby properties and 2) the Master Plan. Not only does consideration of these two factors make sense from a planning perspective, but they are the factors most considered by the Courts in determining whether a zoning authority has acted within its authority.

Consistency with the use and zoning of nearby properties is easily the most important factor when a relatively small parcel is proposed for rezoning. Rezoning a relatively small parcel in a way inconsistent with surrounding properties is considered invalid "spot zoning."

“Spot zoning” is the singling out of a small parcel of land for a use classification which is different from that of the surrounding area, usually for the benefit of the owner of that parcel, or for the benefit of the owner of some other property in that area, and to the detriment of other owners.

Palermo Land Co., Inc., 561 So.2d at 490.

Further, I like to argue that a city’s zoning decision cannot be considered “arbitrary and capricious” if it is consistent with the city’s master plan. Unless the master plan is outdated or has only been followed inconsistently, because of the time and consideration that went into creating the master plan, a decision consistent with that master plan simply cannot be “arbitrary and capricious.” And the courts seem to agree. As an example, in the *Lakeshore Harbor* case, the court, considering a challenge to a rezoning of property to a neighborhood business district, upheld the rezoning because it was based, in part, consistent with the recommendations made in a city study that considered building heights, traffic, and the nature and character of the uses in the area. 603 So.2d at 195.

When a rezoning is sought for a larger parcel – large enough to stand as its own “neighborhood” – or for a parcel at the “border” of different zoning districts or “use areas,” the question of the use and zoning of surrounding properties may become less important. However, consistency with the Master Plan should always be considered. To zone a property inconsistent with the Master Plan should mean that the Commission (and the City Council) believe that the Master Plan is no longer correct with regard to this property. Before making such a determination, however, the applicant for the rezoning should need to provide evidence as to why the Master Plan is no longer correct. This needs to be more than a statement (or even a showing) that they could make more money if the property were zoned as requested. Questions to be asked that may favor a rezoning inconsistent with the Master Plan may include:

Has other development nearby saturated the market for the land use shown on the Master Plan?

Is there something about the property that makes it physically not feasible for the type of development shown on the Master Plan?

Has other development nearby changed the character of the area?

Has the property remained undeveloped (or underdeveloped) despite serious efforts to use or develop the property as zoned or planned?

Is there something “special” about the proposed development that the City really wants or needs?

Absent an affirmative answer to questions like these, we always urge the Commission to zone property consistent with the Master Plan.

We are, of course, available for any additional questions or concerns regarding these matters.

Woodrow Muhammad - IBTS

From: Nathan Gaspard <Nathan.Gaspard@erm.com>
Sent: Monday, February 03, 2014 11:00 AM
To: David Barrow - CoC
Cc: Woodrow Muhammad - IBTS
Subject: RZ-06-13, REZONING FROM RURAL to B1 (NEIGHBORHOOD BUSINESS DISTRICT ONE)

Follow Up Flag: Follow up
Flag Status: Flagged

David,

Per your request, I submit the following comments regarding the referenced re-zoning case.

First, in reviewing the staff summary report I assume that the C2 Heavy Commercial surrounding zoning referred to is a remnant of the previous EBR zoning plan.

If that is indeed the case, it should be noted that the City's more recently adopted Land Use Plan and the Revised Zoning Map that is under review would make that commercial development a legal non-conforming use and therefore should not be considered as rationale for rezoning the front part of the parcel. This would constitute a spot zoning and should be avoided.

Regarding the current land use plan and proposed zoning map, this area was shown as best suited for residential development for the following reasons:

- The community's expressed desire to protect the character of rural areas;
- The community's expressed desire that commercial development to be concentrated in clusters, in areas with adequate roadway capacity and existing development to support new commercial;
- Lack of adequate roadway infrastructure to support commercial strip development; and
- That there is a neighborhood commercial area shown less than a mile from this property at the intersection of Denham and Hubbs Road which would adequately serve the current needs of this area of the city.

No compelling reasons nor community benefits are provided in this request that would justify the requested change in my opinion.

Please let me know if you have any questions.

Nathan Gaspard
Senior Consultant

ERM
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Alexandria, Louisiana
71301

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nathan.gaspard@erm.com

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Woodrow Muhammad - COC

From: Sheri Morris <SMorris@roedelparsons.com>
Sent: Wednesday, February 12, 2014 12:50 PM
To: lwweeks@cox.net
Cc: Woodrow Muhammad - COC; David Barrow - CoC
Subject: Central - Planning and Zoning

Mr. Weeks -

The Zoning Commission agenda for February 27, 2014 includes your application designated as RZ-6-13 requesting to rezone property located at 13151 Denham Road from Rural to B1. The Central Master Plan Land Use recommendation for the property is Low Density Residential.

The zoning of your property can be amended only by ordinance enacted after required procedures including a public hearing before the Zoning Commission are completed. If a majority of the Zoning Commission members vote to recommend to the council amending the zoning of your property, an ordinance enacting the zoning amendment will be prepared and introduced at the following Council meeting. If, after a public hearing before the Council, a majority of the Council votes to amend the zoning, the zoning will be amended.

While you intend only "to construct one small structure and parking consistent with a Residential Architecture Exterior" and "would like for this amendment to stay in place if the property was to change ownership in the future" a change in zoning will allow any subsequent property owner to use the property in any manner consistent with the zoning district.

I am unclear on what you mean by amending the property but if you mean changing property boundaries to join two tracts with inconsistent zoning, the matter will have to be reviewed by both the Planning Commission and the Zoning Commission.

Finally, you indicate that you desire to provide access to the property zoned C-2. Access to the C-2 property can be achieved by dedicating a servitude in favor of the C-2 Property without any amendment to the zoning.

I hope the foregoing information addresses your inquiries.

Sheri

Thanks, Sheri

Sheri M. Morris, City Attorney
CITY OF CENTRAL
Roedel, Parsons, Koch, Blache, Balhoff & McCollister, A L.C.
8440 Jefferson Highway, Suite 301
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-----Original Message-----

From: Sheri Morris
Sent: Tuesday, February 11, 2014 8:07 AM
To: 'lwweeks@cox.net'
Subject: Central - Planning and Zoning

Mr. Weeks -

I received your emails below. I will review the relevant documents this week and expect to be able to respond to your request later in the week.

Sheri

Sheri M. Morris, City Attorney
CITY OF CENTRAL
Roedel, Parsons, Koch, Blache, Balhoff & McCollister, A L.C.
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-----Original Message-----

From: lwweeks@cox.net [mailto:lwweeks@cox.net]
Sent: Tuesday, February 11, 2014 7:12 AM
To: Sheri Morris
Subject: Fwd: Interpretation

Good Morning Ms. Morris,

I would appreciate your interpretation about an amendment on rezoning. I know it has been done before.

Thanks

James Larry Weeks

> Date: Thu, 6 Feb 2014 11:59:29 -0500
> From: <lwweeks@cox.net>
> To: smorris@reodelparsons.com
> Subject: Interpretation
>

> Ms. Morris,
> My Name is James "Larry" Weeks and I'm emailing you in reference to a rezoning issue on Denham Road. At the Planning & Zoning Meeting it was discussed to take this small tract of property adjoin the 9+ acres of C-2 that I already own and allow the rezoning of that front to B-1. Originally when the property was rezoned the entire tract was rural, and it was rezoned to C-2 with an amendment to the horizon plan and that the front 600' would stay rural for a residence

to be constructed in front of the commercial property. I would only like to construct one small structure and parking consistent with a Residential Architecture Exterior. This would be the only permanent structure on the B-1 Tract and would give me commercial access to the C-2 property.

> At the Rezoning Hearing the question was asked if the property could be amended, and Mr. Woodrow Muhammad's response was yes he thought it could. I would like for this amendment to stay in place if the property was to change ownership in the future. I have maintained a successful construction business on the C-2 property for almost 20 year and have had no complaints from surrounding landowners.

> Your advise and consideration in this matter would be greatly appreciated.

> James Larry Weeks

> 225 603-5488

> lwweeks@cox.net

PUBLIC HEARING

CITY OF CENTRAL

PLANNING & ZONING BOARD

Date: FEBRUARY 27, 2014 Time: 6pm

Location: Kristenwood 14025 Greenwell Springs Rd.

Case Number: RZ-6-13

☒ **REQUEST TO REZONE**

FROM: RURAL

TO: B1 (NEIGHBORHOOD BUSINESS DISTRICT)

☐ **OTHER REQUEST**
REZONING FIRST 600' OF PROPERTY

For More Information Contact
City of Central 262-5000

02/07/2014 15:32